INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

Date Filed

29-CA-094538 12/7/2012 INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring. 1 EMPLOYER AGAINST WHOM CHARGE IS BROUGHT Tel No 718-928-1000 a Name of Employer Fresh Direct LLC Cell No Fax No Employer Representative d Address (Street, city state, and ZIP code) 23-30 Borden Avenue Jason Ackerman e-Mail Long Island City, NY 11101 Number of workers employed Type of Establishment (factory, mine wholesaler, etc.) Identify principal product or service Warehouse Grocery delivery k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a) subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act 2 Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) During or around the end of August or early September, 2012, the Employer, by (b) (6), (b) (7), interrogated employees regarding their union activity. During the past 6 months, the Employer treated supporters of International Brotherhood of Teamsters, cal 895, (the Union), differently by restricting their use of radios provided by the Employer in retaliation for their sup refused to loan During or around the beginning of September, 2012, the Employer by (first name unknown) (b) (6), (b) (6), money in retaliation for (b support for the Union. of party filing charge (if labor organization, give full name, including local name and number) ⊆n; (b) (6), (b) 4b Tel No 4a Address (Street and number, city state and ZIP code) (b) (6), (b) (7)(C) 4c Cell No 4d Fax No 4e e-Mail 5 Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Tel No 6 DECLARATION SAME I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief (b) (6), (b) (7)(C) Office, if any Cell No (6), (b) (7) SAME representative or person making charge) (Print/type name and title or office, if any) Fax No e-Mail Address

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 ef seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to current the information will cause the NLRB. In decline to market its processes.



REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713

Fax: (718)330-7579

December 10, 2012



Re: Fresh Direct LLC Case 29-CA-094538

Dear (b) (6), (b) (7)(C) :

The charge that you filed in this case on December 7, 2012 has been docketed as case number 29-CA-094538. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge will be investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If the Board agent is not available, you may contact Field Attorney NANCY LIPIN whose telephone number is (718)330-7705.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

<u>Procedures</u>: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing)

through our website www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlrb.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director



REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

December 10, 2012

JASON ACKERMAN FRESH DIRECT LLC 2330 BORDEN AVE LONG ISLAND CITY, NY 11101-4515

> Re: Fresh Direct LLC Case 29-CA-094538

Dear Mr. ACKERMAN:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If this Board agent is not available, you may contact Field Attorney NANCY LIPIN whose telephone number is (718)330-7705.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate. Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a determination as to whether

or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

<u>Procedures:</u> We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, <u>www.nlrb.gov</u>. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director

Enclosures:

- 1. Copy of Charge
- 2. Commerce Questionnaire



REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713

Fax: (718)330-7579

March 29, 2013



Re: Fresh Direct LLC Case 29-CA-094538

Dear (b) (6), (b)

We have carefully investigated and considered your charge that Fresh Direct, LLC, has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the portions of the charge that allege unlawful restriction of work-radios for supporters of Teamsters, Local 805, (hereinafter called the Union) and unlawful refusal to loan you money in retaliation for your support for the Union, because there is insufficient evidence to establish a violation of the Act. The portion of the charge alleging unlawful interrogation will be processed further.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on April 12, 2013. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by no later than 11:59 p.m. Eastern Time on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at 5:00 p.m. Eastern Time or be postmarked or given to the delivery service no later than April 11, 2013.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before April 12, 2013.** A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/

James G. Paulsen Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS
BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

JASON ACKERMAN FRESH DIRECT LLC 2330 BORDEN AVE LONG ISLAND CITY, NY 11101-4515 ALAN I. MODEL, ESQ LITTLER MENDELSON, P.C. 1 NEWARK CTR 1085 RAYMOND BLVD, 8TH FLR NEWARK, NJ 07102-5235

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD SETTLEMENT AGREEMENT

IN THE MATTER OF Fresh Direct, LLC

Case No. 29-CA-094538

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS**:

POSTING OF NOTICES — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notices to the Charged Party in English, Spanish, and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them inside the maintenance department in the Fresh Direct LLC facility, located at 23-30 Borden Avenue, Long Island City, New York. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case, in which a consolidated complaint¹ issued on April 23, 2013, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the Acting General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters other than the allegations settled by this Agreement that happened before this Agreement was approved regardless of whether the Acting General Counsel knew of those matters or could have easily found them out. The Acting General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence. By approving this Agreement the Regional Director withdraws any Complaints and Notices of Hearing previously issued in the above case, and the Charged Party withdraws any answers filed in response.

NON-ADMISSIONS – By entering into this Settlement Agreement, Fresh Direct, LLC does not admit that it has violated any section of the National Labor Relations Act.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the Acting General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

¹ Case Nos. 29-CA-088077 and 29-CA-094538 were severed by Order of the Regional Director on June 3, 2013. On that same date, the Regional Director approved the withdrawal the Charge in Case No. 29-CA-088077 as a result of the non-Board resolution of the charge.

Yes	No	
Initials	Initials	

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the Acting General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days written notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on April 23, 2013, in the instant case. Thereafter, the Acting General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel. This default protocol described above will remain in place for six (6) months following the approval of this Agreement by the Regional Director.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the Acting General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party Fresh Direct, LLC	Date	Charging Party (b) (6), (b) (7)	Date
Name and Title: /s/ Alan Model	June 3, 2013	/s.	June 3, 2013
Recommended By:	Date	Approved By:	Date
David Stolzberg, Attorney	June 4,2013	James G. Paulsen Regional Director, Region 29	6/4/13

² The Regional Director will reissue only those portions of the Complaint relating to Case No. 29-CA-094538.

(To be printed and posted on official Board notice form)

FEDERA	LL LAW GIVES YOU THE RIGHT TO:
	Form, join, or assist a union; Choose a representative to bargain with us on your behalf; Act together with other employees for your benefit and protection; Choose not to engage in any of these protected activities.
WE WIL	L NOT do anything to prevent you from exercising the above rights.
WE WIL	L NOT ask you about employee support for a union.
WE WIL Act.	L NOT in any like or related manner interfere with your rights under Section 7 of the
	FRESH DIRECT, LLC (Employer)
Dated:	By:(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

Telephone: 718-330-7713 Hours of Operation: 9:00a.m. to

5:30p.m.



September 3, 2013

National Labor Relations Board Region 29 Two Metro Tech Center – 5th Floor Brooklyn, NY 11201-3838

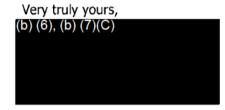
Re:

Fresh Direct, LLC Case No. 29-CA-94538

Dear Sir/Madam:

In connection with the above-referenced matter, please find enclosed a completed "Confirmation of 60-Day Posting.

Thank you for your assistance.



FINAL CERTIFICATION OF POSTING

Re: Fresh Direct LLC Case No. 094538

The Notice to Employees in English and Spanish provided by the National Labor Relations Board in the above matter remained continuously and conspicuously posted for at least 60 days.

CHARGED PARTY/RESPONDENT

Fnesh Dinect, LLC

By: (b) (6), (b) (7)(C)

Title: (0) (6), (b) (7)(C)

Date: 09/03/13



NOTICE TO EMPLOYEES



POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union; Choose a representative to bargain with us on your behalf; Act together with other employees for your benefit and protection; Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT ask you about employee support for a union.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

Dated: 06 17 17

FRESH DIRECT, LLC
(b) (6), (b) (7)(C)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov and the toll-free number (866)667-NLRB (6572).

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office,



FIJADO CONFORME A UN ARREGLO APROBADO POR UN DIRECTOR REGIONAL DE LA JUNTA NACIONAL DE RELACIONES DEL TRABAJO

UNA AGENCIA DEL GOBIERNO DE LOS ESTADOS UNIDOS

LA LEY FEDERAL LE DA EL DERECHO A:

Formar, afiliarse, o ayudar una unión Escoger representantes para negociar con nosotros en su representación Actuar conjuntamente con otros empleados para su beneficio y protección Escoger en no involucrarse en ninguna de estas actividades protegidas.

NOSOTROS NO haremos nada para evitar su ejercicio de sus derechos arriba indicados.

NOSOTROS NO le preguntaremos acerca de empleados que respaldan a una Unión.

(b) (6), (b) (7)(C)

NOSOTROS NO en ninguna manera similar o relacionada interferiremos con sus derechos bajo la Sección 7 del Acta.

FRESH DIRECT, LLC

Fechado: OC/17/17

La Junta Nacional de Relaciones del Trabajo es una agencia Federal independiente establecida en 1935 para hacer cumplir la Ley Nacional de Relaciones del Trabajo. La Junta lleva a cabo elecciones mediante voto secreto para determinar si los empleados quieren estar representados por una unión e investiga y remedia las prácticas ilícitas de trabajo cometidas por los patronos y las uniones. Para obtener más información sobre sus derechos conforme a la Ley y cómo puede radicar un cargo o una petición de elección, puede hablar confidencialmente con cualquier agente en la Oficina Regional de la Junta indicada más adelante. También puede obtener información de la página de Internete de la Junta: www.nlrb.gov.

ESTE ES UN AVISO OFICIAL Y NO DEBE SER MUTILADO POR NADIE

Este aviso debe permanecer fijado durante 60 días consecutivos a partir de la fecha en que sea fijado y no debe ser alterado, multilado, o cubierto por ningún otro material. Cualesquiera preguntas con relación a este aviso o el cumplimiento con las disposiciones del mismo pueden ser dirigidas a la Oficina de la Junta,

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE		
Case	Date Filed	
29-CA-093054	11/9/2012	

INSTRUCTIONS:

The above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the highst guaranteed in Section 7 of the habove named employer has interfered with, restrained, and coerced employees in the exercise of the highst guaranteed in Section 7 of the habove in the above named employer has interfered with, restrained, and coerced employees in the exercise of the hight guaranteed in Section 7 of the habove in the exercise of the hight guaranteed in Section 7 of the habove in the exercise of the hight guaranteed in Section 7 of the habove in the section 8 of the hight guaranteed in Section 8 of the habove remove within the meaning of section 8 of the habove fill and the section 8 of the habove fill and 8 of the section 8 of the habove fill and 8 of the section 8 of the habove fill and 8 of the section 8 of the habove fill and 8 of the section 8 of the section 8 of the habove fill and 8 of the section 8 of the habove fill and 8 of the section 8 of the section 8 of the habove fill and 8 of the section	File an original and 4 copies of this charge with NURS Regional D		rlabor practice occurred or is occurring.
FRESH Direct In this states, city than 216 code. 33:30 E clean Acone Lysts and City, Ny 11161 Type of Establishment (locker, more wholester of t) Type of Establishment (locker, more wholester of t) The attractional control (locker, more wholester of t) The attractional control (locker, more wholester of t) The attractional (locker) more wholester of the attractional (locker) more wholester of the attractional (locker) The attractional (locker) more wholester of the attractional (locker) The attractional (locker) more wholester of the attractional (locker) The attractional (locker) more wholester of the attractional (locker) The attractional (locker) more wholester of the attractional (locker)		AINST WHOM CHARGE IS BROUGHT	In Number of workers employed
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REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

November 13, 2012

JASON ACKERMAN FRESH DIRECT 2330 BORDEN AVE LONG ISLAND CITY, NY 11101-4515

Re: Fresh Direct

Case 29-CA-093054

Dear Mr. ACKERMAN:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If this Board agent is not available, you may contact Field Attorney NANCY LIPIN whose telephone number is (718)330-7705.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate. Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a determination as to whether

or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

<u>Procedures:</u> We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, <u>www.nlrb.gov</u>. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director

Enclosures:

- 1. Copy of Charge
- 2. Commerce Questionnaire

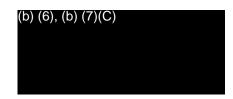


REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713

Fax: (718)330-7579

November 13, 2012



Re: Fresh Direct

Case 29-CA-093054

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on November 9, 2012 has been docketed as case number 29-CA-093054. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge will be investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If the Board agent is not available, you may contact Field Attorney NANCY LIPIN whose telephone number is (718)330-7705.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

<u>Procedures:</u> We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing)

through our website www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlrb.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN

Regional Director

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESH DIRECT, LLC

and

Cases 29-CA-093054 29-CA-094538

(b) (6), (b) (7)(C)

ORDER

The Employer's petition to revoke subpoena duces tecum B-705612 is denied. The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v.*

¹ To the extent that the Employer has provided some of the requested material, it is not required to produce that information again.

To the extent that the Employer is arguing that the Board lacks a quorum to rule on the Petition to Revoke, we also reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has found that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, ____ F.3d ____ (D.C. Cir. 2013). However, as the court itself acknowledged, its decision is in conflict with at least three other courts of appeals. See Evans v. Stephens, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *United States v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.

² We reject the Employer's argument that the Board lacked a quorum to issue the instant subpoena. Section 102.31(a) of the Board's Rules and Regulations states that "[t]he Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof." Here, Chairman Pearce issued the subpoena, in accordance with this Rule.

Carolina Food Processors, Inc., 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., February 26, 2013

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

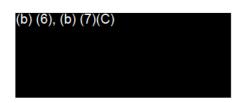
SHARON BLOCK, MEMBER



REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

March 29, 2013



Re: Fresh Direct

Case 29-CA-093054

Dear (b) (6), (b) (7)(C) :

We have carefully investigated and considered your charge that Fresh Direct has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge because there is insufficient evidence to establish a violation of the Act.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on April 12, 2013. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by no later than 11:59 p.m. Eastern Time on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at 5:00 p.m. Eastern Time or be postmarked or given to the delivery service no later than April 11, 2013.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlrb.gov, click on E-File Documents, enter the NLRB Case Number and follow the

detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before April 12, 2013.** A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours, James J. Paulsen

James G. Paulsen Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS
BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

JASON ACKERMAN Fresh Direct 2330 BORDEN AVE LONG ISLAND CITY, NY 11101-4515

ALAN I. MODEL, ESQ LITTLER MENDELSON, P.C. 1 NEWARK CTR 1085 RAYMOND BLVD, 8TH FLR NEWARK, NJ 07102-5235 INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

Date Filed

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which		rring.
a. Name of Employer	AGAINST WHOM CHARGE IS BROUGHT	b. Tel. No. 718-928-1000
Fresh Direct		718-928-1000
		c. Cell No.
		f. Fax No. 718-4333-0648
d. Address (Street, city, state, and ZIP code) 23-30 Borden Avenue	e. Employer Representative Jason Ackerman	g. e-Mail
Long Island City, New York 11101		
		h. Number of workers employed 1000+
Type of Establishment (factory, mine, wholesaler, etc.) Warehouse	j. Identify principal product or service Food and Grocery	_
k. The above-named employer has engaged in and is engagii		ection 8(a), subsections (1) and (list
subsections) (3)		abor Relations Act, and these unfair labor
practices are practices affecting commerce within the meai within the meaning of the Act and the Postal Reorganizatio	ning of the Act, or these unfair labor practices are	
Basis of the Charge (set forth a clear and concise statement)		nractices)
During or around (b) (6), 2012, the above-named		
(b) in retaliation for having engaged in union and		
During or around (b) 2012, the above-named (b) in retaliation for having engaged in union action	Employer discriminated against its emp ivities and/or other protected concerted a	ployee (b) (6), (b) by discharging activities.
3 Eull name of party filing charge (if labor organization, give	full name, including local name and number)	· —·
4a. Address (Street and number, city, state, and ZIP code)		4b. Tel. No. (b) (6), (b) (7)
(b) (6), (b) (7)(C)		4c. Cell No.
		4d. Fax No.
,		THE WAY
		4e. e-Mail (b) (6), (b) (7)(C)
Full name of national or international labor organization of organization)	which it is an affiliate or constituent unit (to be fille	d in when charge is filed by a labor
DECLARATION I declare that I have read the above charge and that the statement		Tel No.
(b) (6), (b) (7)(C)	(b) (6), (b)	Office, if any, Cell No
Ву	(Print/type name and title or office, if any)	Fax No.
	09-28-2012	e-Mail
Address same	(date)	same
·	·	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



Agency Website: www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

October 3, 2012

JASON ACKERMAN FRESH DIRECT 2330 BORDEN AVE LONG ISLAND CITY, NY 11101-4515

Re: Fresh Direct

Case 29-CA-090462

Dear Mr. ACKERMAN:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If this Board agent is not available, you may contact Attorney KATHY DREW-KING whose telephone number is (718)330-2146.

<u>Right to Representation</u>: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

<u>Presentation of Your Evidence</u>: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

<u>Procedures:</u> We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, <u>www.nlrb.gov</u>. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director

Enclosures:

- 1. Copy of Charge
- 2. Commerce Ouestionnaire

TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713

Fax: (718)330-7579

October 3, 2012



Re: Fresh Direct

Case 29-CA-090462

Dear (b) (6), (b) (7)

The charge that you filed in this case on October 1, 2012 has been docketed as case number 29-CA-090462. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge will be investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If the Board agent is not available, you may contact Attorney KATHY DREW-KING whose telephone number is (718)330-2146.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlrb.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director



REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

January 25, 2013

ALAN I. MODEL, ESQ. LITTLER MENDELSON, P.C. ONE NEWARK CENTER 8TH FL NEWARK, NJ 07102

Re: Fresh Direct

Case 29-CA-090462

Dear Mr. Model:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

/s/

JAMES G. PAULSEN Regional Director

cc: JASON ACKERMAN
2330 BORDEN AVE
LONG ISLAND CITY, NY 11101-4515



INTERNET FORM NLRB-501

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

DO	NOT	WRITE	IN	ZHIS	SPACE
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CHARGE AGAINST EMPLO	OYER Case	Date Filed
ISTRUCTIONS:	į	
le an original with NLRB Regional Director for the region in which		
	AGAINST WHOM CHARGE IS E	E T-I NI-
a Name of Employer		^b ^{lei No} 718-928-1000
Fresh Direct		c Cell No
		f. Fay No.
d Address (Street city state and ZIP code)	e Employer Representative	f Fax No 718-433-0648
23-30 Borden Avenue	Jason Ackerman	g e-Mail
Long Island City, New York 11101	;	
		h Number of workers employed 1000+
Type of Establishment (factory mine wholesaler etc.) Warehouse	Identify principal product or ser Food and Grocery	rvice
The above-named employer has engaged in and is engage	ng in unfair labor practices within the	meaning of section 8(a), subsections (1) and (list
subsections) 8(a)(3) and (4)	of th	ne National Labor Relations Act, and these unfair labor
practices are practices affecting commerce within the mea within the meaning of the Act and the Postal Reorganization	-	practices are unfair practices affecting commerce
2 Basis of the Charge (set forth a clear and concise stateme	ent of the facts constituting the alleged	d unfair labor practices)
On or about (b) (6), 2012, the above-named Er		
retaliation for having testified during proceedings	at the National Labor Relation	ns Board
On or about (b) (6), 2012, the above-named Erretaliation for (b) activities on behalf of the Union Full name of party filing charge (if labor organization, give (b) (6),	·	its employee (b) (6), by discharging (b) in
4a Address (Street and number city, state and ZIP code)		4b Tel No
b) (6), (b) (7)(C)		4c Cell No (b) (6), (b) (7)
		4d Fax No
		4e e-Mail
_		(b) (6), (b) (7)(C)
5 Full name of national or international labor organization o organization)	f which it is an affiliate or constituent u	unit (to be filled in when charge is filed by a labor
(b) (6), (b) (7)(C)		Tel No
	ents are true to the best of my knowledge	
//5) (6) (b)	Office, if any Cell No
Ву	(6), (b)	same
erson making charge)	(Pnnt/type name and title or office if an	Fax No
		 e-Mail
same	8/8/1:	2 same
Address		(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U S C § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to invoke its processes.



REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

August 28, 2012

JASON ACKERMAN FRESH DIRECT 2330 BORDEN AVE LONG ISLAND CITY, NY 11101-4515

Re: Fresh Direct

Case 29-CA-088077

Dear Mr. ACKERMAN:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If this Board agent is not available, you may contact Attorney KATHY DREW-KING whose telephone number is (718)330-2146.

<u>Right to Representation</u>: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

<u>Presentation of Your Evidence</u>: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

<u>Procedures:</u> We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, <u>www.nlrb.gov</u>. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director

Enclosures:

- 1. Copy of Charge
- 2. Commerce Ouestionnaire

TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Telephone: (718)330-7713

Agency Website: www.nlrb.gov

Fax: (718)330-7579

August 28, 2012



Re: Fresh Direct

Case 29-CA-088077

Dear (b) (6), (b)

The charge that you filed in this case on August 27, 2012 has been docketed as case number 29-CA-088077. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge will be investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If the Board agent is not available, you may contact Attorney KATHY DREW-KING whose telephone number is (718)330-2146.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESH DIRECT, LLC

and Case 29-CA-088077

(b) (6), (b) (7)

and Case 29-CA-093054 Case 29-CA-094538

(b) (6), (b) (7)(C)

ORDER

The Employer's petition to revoke subpoena duces tecum B-712703 is denied.

The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena. See

¹ We reject the Employer's argument that the Board lacked a quorum to issue the instant subpoena. Section 102.31(a) of the Board's Rules and Regulations states that "[t]he Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof." Here, Chairman Pearce issued the subpoena, in accordance with this Rule.

To the extent that the Employer is arguing that the Board lacks a quorum to rule on the Petition to Revoke, we also reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has found that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, ____ F.3d ____ (D.C. Cir. 2013). However, as the court itself acknowledged, its decision is in conflict with at least three other courts of appeals. See Evans v. Stephens, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *United States v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.

generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., February 26, 2013

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

United States Government



NATIONAL LABOR RELATIONS BOARD Region 29 Two MetroTech Center, Fifth Floor Brooklyn, New York 11201-3838

March 29, 2013

Jason Ackerman Fresh Direct, LLC 23-30 Borden Avenue Long Island City, NY 11101

Alan Model Littler Mendelson, P.C. One Newark Center 8th Floor Newark, NJ 01102

Re: Fresh Direct, LLC Case No. 29-CA-088077

Dear Sirs:

This is to inform you that on March 29, 2013, I approved the request of (b) (6), (b) (hereinafter the "Charging Party"), to withdraw the portion of the charge in the above-captioned matter, which alleges that Fresh Direct, LLC (hereinafter the "Employer") violated Section 8(a)(4) of the Act by terminating the employment of Charging Party because of participation in proceedings at the National Labor Relations Board.

The remaining portion of the charge, alleging that the Employer violated Section 8(a)(3) of the Act by discharging Charging Party in retaliation of (b) Union activity, is being processed further.

Very truly yours,

James G. Paulsen Regional Director

cc; (b) (6), (b) (7)(C)

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

FRESH DIRECT, LLC

Respondent

and Case No. 29-CA-088077

(b) (6), (b) (7) , an Individual

FRESH DIRECT, LLC

Respondent

and Case No. 29-CA-094538

(b) (6), (b) (7)(C) , an Individual

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 29-CA-088077 and Case 29-CA-094538, which are based on a charge filed by (b) (6), (b) (6), (b) (7) (hereinafter called (b) and a charge filed by (b) (6), (b) (7) (hereinafter called (b) (6), respectively, against Fresh Direct, LLC (hereinafter called Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

- 1. (a) The charge in Case No. 29-CA-088077 was filed by (b) on August 27, 2012, and a copy was served by regular mail on Respondent on or about August 28, 2012.
- (b) The charge in Case No. 29-CA-094538 was filed by (b) (6), on December 7, 2012, and a copy was served by regular mail on Respondent on or about December 10, 2012.
- 2. At all material times, Respondent, a domestic corporation, with its principal office and place of business located at 23-30 Borden Avenue, Long Island City, New York, herein called its Long Island City facility, has been engaged in the operation of an internet based supermarket selling food and grocery products to customers located in Manhattan, Queens, Bronx, Westchester, Long Island, New Jersey, and Connecticut.

- 3. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations described above in paragraph 2:
 - (a) derived gross annual revenues in excess of \$500,000, and
- (b) purchased goods and materials valued in excess of \$5,000, directly from suppliers located outside the State of New York.
- 4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), 2(6), and 2(7) of the Act.
- 5. At all material times, Local 805, International Brotherhood of Teamsters, herein called the Union, has been a labor organization within the meaning of Section 2(5) of the Act.
- 6. At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7) (c) (b) (6), (b) (7)(C) (b) (6), (b) (6), (b) (7)(C)

- 7. (a) On or about (b) (6), 2012, Respondent discharged (b)
- (b) Since on or about (b) (6), 2012, Respondent has refused to reinstate or offer to reinstate (b) to (b) former position of employment.
- (c) Respondent engaged in the conduct described above in subparagraphs 7(a) and 7(b) because (b) supported the Union and to discourage employees from engaging in such activities for the purpose of collective bargaining or mutual aid or protection.
- 8. On dates presently unknown during or around late August or early September, 2012, Respondent, by (b) (6).
- (a) on the third floor of Respondent's Long Island City facility, interrogated its employees about their union activities and sympathies;
- (b) in the maintenance department (b) (6), (b) (7)(C) at Respondent's Long Island City facility, interrogated its employees about their union activities and sympathies;
- (c) in the shipping department at Respondent's Long Island City facility, interrogated its employees about their union activities and sympathies.
- 9. By the conduct described above in paragraph 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.
- 10. By the conduct described above in paragraph 7, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its

employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraph 7, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

The Acting General Counsel further seeks, as part of the remedy for the allegations in paragraph 7 that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be received by this office on or before May 7, 2013, or postmarked on or before May 6, 2013. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

EXTENSION OF TIME

Any request for an extension of time to file an answer must, pursuant to Section 102.111(b) of the board's Rules and Regulations, be filed by the close of business on May 7, 2013. This request should be in writing and addressed to the Regional Director of Region 29.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on June 4, 2013, 9:30a.m. at Two MetroTech Center, Brooklyn, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: April 23, 2013

James. G. Paulsen

REGIONAL DIRECTOR

NATIONAL LABOR RELATIONS BOARD

REGION 29

TWO METRO TECH CENTER STE 5100

FL 5

BROOKLYN, NY 11201-3838

Attachments

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

FRESH DIRECT, LLC

Respondent

CASE NO. 29-CA-088077

and

(b) (6), (b) (7), an Individual

FRESH DIRECT, LLC

CASE NO. 29-CA-094538

Respondent

and

(b) (6), (b) (7)(C) an Individual

MOTION TO STAY PROCEEDINGS

Respondent Fresh Direct, LLC ("Respondent") moves for a stay of these proceedings in the above-referenced cases because the National Labor Relations Board does not currently have a constitutionally valid quorum of three members and therefore does not have the authority to take lawful action in this case. See New Process Steel, LP v. NLRB, 130 S. Ct. 2635 (2010). The recess appointments of Sharon Block and Richard Griffin as members of the Board by the President on January 4, 2012 were constitutionally invalid, leaving only Chairman Mark Pearce as a validly appointed member of the Board at this time. The Supreme Court held in New Process Steel that the Board needs a quorum of three members to take action.

Respondent bases this motion on the decision of the D.C. Circuit Court of Appeals in Noel Canning v. NLRB, 705 F.3d 490 (D.C. Cir. 2013), and relies on the rationale of the court in that case. Specifically, the appointments in question did not occur during an intersession recess of the Senate, and the vacancies did not happen during such a recess.

In the alternative, even if the rationale of the D.C. Circuit in Noel Canning does not survive review by the Supreme Court, the appointments of Sharon Block and Richard Griffin to the Board were nevertheless invalid because the Senate was not in recess on January 4, 2012, when the appointments were made. At that time, the Senate was operating pursuant to a unanimous consent agreement, which provided that the Senate would meet in pro forma sessions every three business days from December 20, 2011, through January 23, 2012. During the December 23 pro forma session, the Senate conducted important business, passing a two-month extension of a payroll tax cut. Moreover, during the January 3 pro forma session, the Senate acted to convene the second session of the 112th Congress and fulfill its duty to meet on that date, as required by the Twentieth Amendment to the Constitution. The Senate did not go into recess at the conclusion of that day's assembly. Instead, the Senate was scheduled to meet again only three days later, on January 6, but the President intervened by making the appointments on January 4.

The President did not have the power to decide that the Senate was not in session when he made these appointments. Under Article I, Section 5, of the Constitution, each House of Congress has the power to determine the rules of its proceedings. See United States v. Balin, 144 U.S. 1 (1892). Thus, the appointments were unconstitutional.

Furthermore, the appointment of Acting General Counsel Solomon was and is constitutionally invalid. Therefore, the Acting General Counsel lacks the authority to act in the above-captioned matter including but not limited to the authority to issue and prosecute the Complaint in the above-captioned matter. Also, the appointment of the Regional Director for Region 29 was and is constitutionally invalid. Therefore, the Regional Director lacks the authority to act in the above-captioned matter including but not limited to the authority to issue

and prosecute the Complaint in the above-captioned matter. See 7 FR 45696 ("The appointment,

transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a

Subregional office shall be made by the General Counsel only upon the approval of the Board.")

The Solicitor General, on behalf of the Board, recently filed a petition for a writ of

certiorari with the Supreme Court in the Noel Canning case. Because of the importance of this

issue to the Board, and its impact on the separation of powers between the legislative and

executive branches of the federal government, it is likely that the Board's petition will be granted

and the constitutionality of the President's appointments will be determined in the reasonably

near future. Furthermore, in light of the unanimous decision of the D.C. Circuit in Noel

Canning, as well as the fact that the Senate was not in recess under its own rules, there is a high

probability that the Supreme Court will find the appointments to be invalid. The Board should

conserve its resources by staying the proceedings in this case while the critical issue of the recess

appointments is being resolved.

For these reasons, the Board should stay these proceedings until the Supreme Court has

ruled on whether the Board has a constitutional quorum.

Dated this 7th day of May 2013.

Respectfully submitted,

/s/ Alan I. Model

Alan I. Model

LITTLER MENDELSON, P.C.

Counsel for Respondent Fresh Direct, LLC

One Newark Center, 8th Floor

Newark, New Jersey 07102-5311

Telephone: 973.848.4700

Facsimile: 973.755.0439

amodel@littler.com

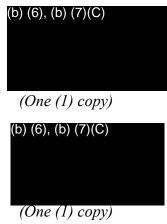
3

CERTIFICATE OF SERVICE

I, Alan I. Model, Esq. certify that on this date I caused a copy of the foregoing Motion to Stay Proceedings to be served via Electronic Filing through the Board's website upon:

James G. Paulsen Regional Director National Labor Relations Board, Region 29 Two Metro Tech Center Ste. 5100 Fl. 5 Brooklyn, New York 11201-3838

and via FedEx, overnight delivery upon:



By: <u>/s/ Alan I. Model</u> Alan I. Model

Date: May 7, 2013

Firmwide:120065602.1 051456.1063

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

FRESH DIRECT, LLC

CASE NO. 29-CA-088077

Respondent

and

(b) (6), (b) (7), an Individual

FRESH DIRECT, LLC

CASE NO. 29-CA-094538

Respondent

and

(b) (6), (b) (7)(C) , an Individual

RESRPONDENT'S ANSWER TO THE ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Fresh Direct, LLC ("Respondent"), in accordance with the National Labor Relations Act (the "Act") and the applicable Rules and Regulations of the National Labor Relations Board ("NLRB"), herein formally submits its Answer to the *Order Consolidating Cases, Consolidated Complaint and Notice of Hearing* (the "Complaint") issued by the Regional Director of Region 29 on April 23, 2013. In this regard, and in Answer to the above-captioned unfair labor practice charges, Respondent, as specifically set forth herein, reiterates its denial of any and all claimed violations of Sections 8(a)(1) and/or (3) of the Act, as filed by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (collectively, "Charging Parties"), and herein states the following:

1. Respondent is without the requisite knowledge to either admit or deny the allegations contained in Paragraph 1(a) of the Complaint, except to state that it received, via mail (from the NLRB), a cover letter from the NLRB dated "August 28, 2012" and a copy of an unfair

labor practice charge (b) (6), (b) (7) ") filed by (b), which was dated as being filed on "August 27, 2012."

- 2. Respondent is without the requisite knowledge to either admit or deny the allegations contained in Paragraph 1(b) of the Complaint, except to state that it received, via mail (from the NLRB), a cover letter from the NLRB dated "December 10, 2012" and a copy of an unfair labor practice charge (b) (6), Charge") filed by (b) (6), which was dated as being filed on "December 7, 2012."
- 3. Assuming for purposes of the Complaint and this Answer that the terms "at all material times" (as used in this Paragraph and throughout the Complaint) refers strictly to the time-frame of (b) (6), 2012 and ending on September 30, 2012, Respondent admits the allegations contained in Paragraph 2 of the Complaint.
 - 4. Respondent admits the allegations contained in Paragraphs 3(a) of the Complaint.
 - 5. Respondent admits the allegations contained in Paragraphs 3(b) of the Complaint.
- 6. Relying upon the same assumption regarding the term "at all material times", as set forth above in Paragraph 2 of the Answer, Respondent admits the allegations contained in Paragraph 4 of the Complaint.
- 7. Relying upon the same assumption regarding the term "at all material times", as set forth above in Paragraph 2 of the Answer, Respondent admits the allegations contained in Paragraph 5 of the Complaint.
- 8. Relying upon the same assumption regarding the term "at all material times", as set forth above in Paragraph 2 of this Answer, except to admit that (b) (6), (b) (7) and (b) (6).

 (b) (6), (b) are Section 2(11) supervisors, Respondent denies the allegations contained in Paragraph 6 of the Complaint.

- 9. Respondent admits the allegations contained in Paragraph 7(a) of the Complaint, except points out that (b) (6). date of separation was (b) (6), , 2012.
- 10. Respondent admits the allegations contained in Paragraph 7(b) of the Complaint, except points out that (b) (6), date of separation was (b) (6), 2012.
 - 11. Respondent denies the allegations contained in Paragraph 7(c) of the Complaint.
 - 12. Respondent denies the allegations contained in Paragraph 8(a) of the Complaint.
 - 13. Respondent denies the allegations contained in Paragraph 8(b) of the Complaint.
 - 14. Respondent denies the allegations contained in Paragraph 8(c) of the Complaint.
 - 15. Respondent denies the allegations contained in Paragraph 9 of the Complaint.
 - 16. Respondent denies the allegations contained in Paragraph 10 of the Complaint.
 - 17. Respondent denies the allegations contained in Paragraph 11 of the Complaint.

AFFIRMATIVE DEFENSES

- 1. Respondent alleges and takes the position that, the Complaint does not state a claim upon which relief can be granted.
- 2. Respondent alleges and takes the position that, the Complaint does not state facts sufficient to constitute any unfair labor practices or a violation of the Act.
- 3. Respondent alleges and takes the position that, any statements or actions alleged to have been made by any of its supervisors and/or agents during the time period covered by the Complaint (which, again, Respondent fully denies ever occurring as described), nonetheless, fall within the ambit of Section 8(c) of the Act and, as such, neither constitute nor can be used as evidence of an unfair labor practice.
- 4. Respondent alleges and takes the position that, any actions taken by Respondent were taken for lawful, legitimate, and compelling business reasons and not in violation of the

Act.

- 5. Respondent alleges and takes the position that, the claims alleged, in whole and/or in part, are frivolous and without foundation in law or fact.
- 6. Respondent alleges that by virtue of their action and inaction, the National Labor Relations Board and the General Counsel violated the National Labor Relations Board's Rules and Regulations and have denied Respondent due process of law.
- 7. Respondent alleges and takes the position that, assuming, *arguendo*, any allegation in the Complaint is found to be a violation of the Act (which Respondent contends would be improper and legally baseless), such would still legally qualify as being a *de minimis* violation of the Act and does not warrant a finding of an unfair labor practice or the issuance of a remedial order.
- 8. Respondent alleges that, assuming, *arguendo*, any allegation in the Complaint is found to be a violation, the remedy requested by the General Counsel is inappropriate as a matter of law.
- 9. Respondent alleges and takes the position that, certain allegations in the Complaint are barred because they are not encompassed within the underlying operative filed unfair labor practice charge, as required by the Act.
- 10. Respondent alleges and takes the position that, the NLRB has no jurisdiction over those allegations set forth in the Complaint which may prove to be time barred by the applicable six-month statute of limitations set forth in Section 10(b) of the Act.
- 11. Respondent alleges and takes the position that, the instant allegations, as contained in the unfair labor practice charge, have been filed in bad-faith and this action is being pursued by the Charging Party for vexatious and improper purposes, including, *inter alia*, to

infringe upon Respondent's business operations and to cause it unnecessary delay and expense.

- 12. Respondent alleges and takes the position that, as relates to various allegations of protected concerted activities contained in the Complaint, Respondent lacked knowledge of such alleged conduct, and, thus, such precludes a finding of a *prima facie* case of 8(a)(1) and/or (a)(3) in violation of the Act.
- 13. Respondent alleges and takes the position that, based on Respondent's submissions, the NLRB's investigation warranted dismissal of the allegations in full.
- 14. Respondent alleges and takes the position that, the Board is not properly authorized and lacks jurisdiction to act in the above-captioned matter.
- 15. Respondent alleges and takes the position that, the appointments of Members Block and Griffin were and are constitutionally invalid. Therefore, the Board, Acting General Counsel, Regional Director and/or Judge lacks the authority to act in the above-captioned matter including but not limited to the authority to issue, prosecute, hear, and decide the Complaint in this matter.
- 16. Respondent alleges and takes the position that, the appointment of Acting General Counsel Solomon was and is constitutionally invalid. Therefore, the Acting General Counsel lacks the authority to act in the above-captioned matter including but not limited to the authority to issue and prosecute the Complaint in the above-captioned matter.
- 17. Respondent alleges and takes the position that, the appointment of the Regional Director for Region 29 was and is constitutionally invalid. Therefore, the Regional Director lacks the authority to act in the above-captioned matter including but not limited to the authority to issue and prosecute the Complaint in the above-captioned matter.
 - 19. Respondent alleges and takes the position that, the Board lacked and lacks the

quorum required to act in the above-captioned matter and/or to authorize others to act on its behalf.

- 20. Respondent alleges and takes the position that, the Acting General Counsel failed to follow Board rules and regulations that apply when the Board lacks a quorum.
- 21. Respondent alleges and takes the position that, it reserves the right to assert any additional affirmative defenses it discovers during the course of these proceedings.

WHEREFORE, Respondent requests that the Complaint be dismissed in its entirety.

Respectfully submitted,

Dated: May 7, 2013

/s/ Alan I. Model
Alan I. Model, Esq.
LITTLER MENDELSON, P.C.
One Newark Center, 8th Floor
Newark, NJ 07102
973.848.4700

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

FRESH DIRECT, LLC Respondent

and

Case No. 29-CA-088077

(b) (6), (b) (7) (C)

an Individual

FRESH DIRECT, LLC
Respondent

and

Case No. 29-CA-094538

(b) (6), (b) (7)(C)

an Individual

ORDER SEVERING CASES, APPROVING WITHDRAWAL, AND CANCELLING HEARING

On August 27, 2012, (b) (6), ..., an individual, filed a charge in Case No. 29-CA-088077 against Fresh Direct, LLC (the Respondent) alleging that it engaged in certain violations of the National Labor Relations Act. On December 10, 2012, (b) (6), (b) (7), an individual, filed a charge in Case No. 29-CA-094538 against the Respondent alleging that it engaged in certain violations of the National Labor Relations Act.

On April 23, 2013, the undersigned issued a Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-088077 and 29-CA-094538.

On June 3, 2013, Charging Party (b) (6), and Respondent entered into a non-Board settlement of Case No. 29-CA-088077. Pursuant to this non-Board settlement, (b) (6), requests to withdraw the charge in Case No. 29-CA-088077, conditioned upon the Respondent's performance under the non-Board settlement agreement.

On June 4, 2013, the Regional Director approved an Informal Settlement Agreement in Case No. 29-CA-094538, which remedies the unfair labor practice allegations in that matter.

IT IS HEREBY ORDERED that the request to withdraw the charge in Case No. 29-CA-088077 is approved. Upon application by Charging Party supported by evidence that the Respondent has not met the conditions set forth in the non-Board settlement agreement, the charge in Case No. 29-CA-088077 will be subject to reinstatement for further processing.

IT IS FURTHER ORDERED that Case No. 29-CA-088077 is severed from Case No. 29-CA-094538, and that all Notices of Hearing in these matters are withdrawn and the hearing previously scheduled for June 4, 2013, is cancelled.

Dated at Brooklyn, New York, June 4, 2013.

James G. Paulsen

Regional Director, Region 29 National Labor Relations Board

Two Metrotech Center North, 5th Floor

Brooklyn, New York 11201

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

Date Filed 08/08/12

ISTRUCTIONS:	ah tha atlagad unfair lahar argatiga aggurrad ar is aggurri	
le an original with NLRB Regional Director for the region in whi 1 EMPLOYE	R AGAINST WHOM CHARGE IS BROUGHT	<u>ng</u>
a Name of Employer		b Tel No 718-928-100 🤇
Fresh Direct		
		c. Cell No
		f Fax No 749 422 0649
d Address (Street, city, state, and ZIP code)	e Employer Representative	718-433-0648
23-30 Borden Avenue	Jason Ackerman	g e-Mail
Long Island City, NY 11101		
		h Number of workers employed 1,000+
Type of Establishment (factory, mine, wholesaler, etc.) Warehouse	J Identify principal product or service Food and Grocery	
k The above-named employer has engaged in and is enga	ging in unfair labor practices within the meaning of sec	ction 8(a), subsections (1) and (list
subsections) 8(a)(3)	of the National Lab	or Relations Act, and these unfair labor
practices are practices affecting commerce within the me		
within the meaning of the Act and the Postal Reorganiza		, , , , , , , , , , , , , , , , , , , ,
2 Basis of the Charge (set forth a clear and concise staten	nent of the facts constituting the alleged unfair labor pr	actices)
On or about (b) (6), ,2012 the above named Er		/ - \
because of (b) union or protected activity in sup		
discourage such activity.	port of 200al 000, international Brothernov	
and an and an		
3 Full name of party filing charge (if labor organization, giv	e full name, including local name and number)	
a. Address (Street and number, city, state, and ZIP code)	<u> </u>	4b Tel No
b) (6), (b) (7)(C)		4c Cell No. (b) (6), (b) (7)
		(C)
		4d Fax No
		(b) (6), (b) (7)(C)
5 Full name of national or international labor organization	of which it is an affiliate or constituent unit (to be filled	ın when charge ıs filed by a labor
organization)		
(b) (6), (b) (7)(C)		Tol No.
6 DECLARA	FION nents are true to the best of my knowledge and belief	Tel No
	b) (6), (b) (7)(C)	
		Office, if any, Cell No
By son making charge)		
, and making or a go)		Fax No
,		e-Mail
	08-08-20	
Address	(date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to invoke its processes.

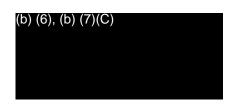
TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Telephone: (718)330-7713

Agency Website: www.nlrb.gov

Fax: (718)330-7579

August 9, 2012



Re: Fresh Direct

Case 29-CA-086868

Dear (b) (6), (b)

The charge that you filed in this case on August 8, 2012 has been docketed as case number 29-CA-086868. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge will be investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If the Board agent is not available, you may contact Attorney KATHY DREW-KING whose telephone number is (718)330-2146.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlrb.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director



Agency Website: www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

August 9, 2012

JASON ACKERMAN FRESH DIRECT 2330 BORDEN AVE LONG ISLAND CITY, NY 11101-4515

Re: Fresh Direct

Case 29-CA-086868

Dear Mr. ACKERMAN:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Attorney DAVID J. STOLZBERG whose telephone number is (718)330-7720. If this Board agent is not available, you may contact Attorney KATHY DREW-KING whose telephone number is (718)330-2146.

<u>Right to Representation</u>: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

<u>Presentation of Your Evidence</u>: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

<u>Procedures:</u> We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, <u>www.nlrb.gov</u>. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

James M Paulsen

JAMES PAULSEN Regional Director

Enclosures:

- 1. Copy of Charge
- 2. Commerce Ouestionnaire



UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD

REGION 29 TWO METRO TECH CENTER STE 5100 FL 5 BROOKLYN, NY 11201-3838

Agency Website. www.nlrb.gov Telephone: (718)330-7713 Fax: (718)330-7579

ALAN I. MODEL, ESQ. LITTLER MENDELSON, P.C. ONE NEWARK CENTER 1085 RAYMOND BLVD, 8TH FLOOR NEWARK, NJ 07102-5235

Re: Fresh Direct

Case 29-CA-086868

Dear Mr. MODEL:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

JAMES G. PAULSEN Regional Director

cc: JASON ACKERMAN
FRESH DIRECT
2330 BORDEN AVE
LONG ISLAND CITY, NY 11101-4515

